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THE DEFENCE OF FRAUD TO A FOREIGN JUDGMENT. — In the conflict of laws we have a department of law as yet undetermined; hence every decision must be tested with much care by accepted first principles. As regards the effect of a foreign judgment, it seems formerly to have been the law that it was *prima facie* evidence merely in a domestic forum; as, upon that theory, the whole case might be reëxamined, various defences as to the merits might be interposed. *Hilton* v. *Guyot*, 159 U. S. 113. However, it is now recognized that by the judgment of a foreign court of due jurisdiction new rights are created; and such foreign acquired rights are by a fundamental principle enforced in the domestic forum upon equal terms with rights acquired at home. *Goddard* v. *Gray*, L. R. 6 Q. B. 139. Accordingly, only such defences should now be allowed in a suit upon a foreign judgment as in a suit upon a domestic judgment. This rule is undoubted as an interstate question in the United States because of the constitutional provision, — see *Hanley* v. *Donoghue*, 116 U. S. 1, 4, — and should be the true rule as an international question. The one exception repeated in many *dicta* is that fraud is a defence to a foreign judgment. *Abouloff* v. *Oppenheimer*, 10 Q. B. D. 295; *Hilton* v. *Guyot*, *supra*. In a late case this is made one of the grounds of decision. *Dumont* v. *Dumont*, 45 Atl. Rep. 107 (N. J., Ch.). A wife sued for divorce in New Jersey; the husband set up his North Dakota decree of divorce. It was held that, since his perjury as to his domicil and as to the desertion of his wife induced the judgment, it would be considered invalid. The case is clearly well disposed of upon the first ground; the lack of jurisdictional facts from whatever cause may always be shown. But the second ground is questionable. Fraud alleged may be either of the court in pronouncing judgment or of the party in procuring judgment. In the first case,

the defence is, it seems, valid; for really no judicial decision has been given. See *Vadala* v. *Lawes*, 25 Q. B. D. 310. But in the principal case, as is usual, the fraud is of the second kind. In that case the one proper process would seem to be to reopen the judgment by direct proceedings where it was rendered. If a domestic judgment might be upset collaterally for fraud, a foreign judgment might also be, — but not necessarily. See *Pemberton* v. *Hughes*, [1899] 1 Ch. 781. But if a domestic judgment may not be so questioned, — and such is all but universally the case, — then, upon the principles above recited, a foreign judgment certainly should not be. See *Dow* v. *Blake*, 148 Ill. 76.

TAXATION OF CHOSES IN ACTION. In *City of New Orleans* v. *Stemple*, 20 Sup. Ct. Rep. 110, the plaintiff, a resident of New York, owned credits evidenced by notes secured by mortgages on real estate in New Orleans. These were in the hands of an agent for collection in New Orleans. The plaintiff urged her foreign residence to restrain the defendant from taxing these notes under La. Acts 1890, c. 106, which provided for the taxation of all credits arising from business done in the state irrespective of the owner's domicil. The court, however, declared that these credits had assumed a concrete form in the notes that evidenced them; that as chattels they were taxable where they were actually situated, no matter where their owner resided; that therefore the act was within the power of a legislature. The leading case of *State Tax on Foreign-held Bonds*, 15 Wall. 300, had to be disposed of, but that caused little difficulty. There it was held that the taxing power of a state did not extend to the mortgage bonds of a domestic railway corporation while in the hands of non-resident owners; but it was admitted that in some instances certain securities could be taxed irrespective of the domicil of the creditor. State bonds, bonds of municipal corporations, and the circulating notes of banks, — these securities had so far a tangible existence as to be regarded, for the purposes of taxation, not as choses in action but as chattels. A legislature which could reach their actual *situs*, then, could tax them. And this has been extended to include shares of stock in national banks. *Tappan* v. *Merchants' National Bank*, 19 Wall. 490.

The present case is clearly not inconsistent with the point actually decided in *State Tax on Foreign-held Bonds*, for there the evidences of the debt were out of the state in the possession of non-resident bondholders. Nor is it inconsistent with any of the court's language. While one may hazard a conjecture that had the evidences of the claims been actually situated in Pennsylvania the decision would have been the same, still the court expressly emphasized the possession of the foreign holder. The whole effect of the present case would seem to be that it establishes another class of evidences of debts — notes secured by mortgages — which may be taxed at their actual *situs* independent of the domicil of the owner of the chose in action. And on principle it is difficult to distinguish between these and shares in a national bank or municipal bonds. The question is one for the legislature, which may well be guided, though not conclusively, by business usage. 10 HARVARD LAW REVIEW, 244. It must be noted that the result reached in the present case may lead to double taxation, — at the *situs* of the security and at the domicil of the owner, — unjust but legal.